**APPENDIX A**

UNITED STATES COURT OF APPEALS,
SIXTH CIRCUIT

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No. 00-6475

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CLAY K. JAMES, *et al.*,
*Plaintiffs-Appellants,*

v.

PIRELLI ARMSTRONG TIRE CORPORATION,
*Defendant-Appellee.*

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Argued: March 21, 2002
Decided and Filed: Sept. 17, 2002

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Before BATCHELDER and CLAY, *Circuit Judges*; ALDRICH, *District Judge.*[*]

OPINION

CLAY, *Circuit Judge.*

Plaintiffs, twenty-one former employees of Defendant Pirelli Armstrong Tire Corporation ("Pirelli" or "the company") or its predecessor in interest, Armstrong Rubber Company ("Armstrong"), appeal from the judgment dismissing their claims of breach of fiduciary duty arising under the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001-1461. During the relevant time periods, Plaintiffs were salaried employees or retired salaried employees at Pirelli's plant in Madison, Tennessee. For the reasons set forth below, we REVERSE the district court's judgment and REMAND the case for further proceedings.

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[*] The Honorable Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation.

## BACKGROUND

Pirelli is a Delaware corporation with headquarters in New Haven, Connecticut, and is in the business of tire production. Pirelli bought the Madison, Tennessee plant from Armstrong in 1988. Pirelli provided medical benefits for its salaried employees and retired salaried employees through group insurance policies with Connecticut General Life Insurance Company, including a 1980 policy, a 1984 policy, and a 1988 policy. Pirelli had the right to terminate the 1980 policy by giving the insurance company advance written notice, as well as the right to amend the policy with the insurance company's approval. In 1981, Armstrong gave its salaried employees a Summary Plan Description ("SPD"), which stated as follows under the heading "Termination of Insurance":

> Your insurance will terminate when you are no longer a member of an eligible class of employees, when the group policy terminates or when you are no longer working for the employer, whichever happens first. However, if you retire, your life insurance and your Medical Care Benefits (other than pregnancy benefits) will be continued until the employer stops payment of premiums for you.
>
> The insurance for a family member terminates when your insurance terminates, or when the family member is no longer eligible, whichever happens first.
>
> Under certain circumstances, it may be possible to continue part or all of your insurance during temporary lay-off, plant closures or leave of absence or when you are unable to work because of sickness or injury. It may also be possible for the insurance to continue on your family members after your death. *See* your Benefit Plan Administrator for this information.

The 1981 SPD contained no other language regarding modification or termination of medical benefits. The 1984 and 1988 policies had the same or substantially the same

provisions regarding cancellation and amendment, and the 1981 SPD was relied upon until 1989, when Pirelli distributed a new SPD. This SPD contained a provision in which Pirelli reserved the right to modify or terminate the plan at any time. Under the section concerning the Comprehensive Medical Insurance Plan, the 1989 SPD provided:

D. WHEN YOUR COVERAGE ENDS

Please refer to Section L of the Handbook for details concerning termination of coverage under this Plan.

Similarly, in the section about the Prescription Drug plan, the 1989 SPD provides:

C. WHEN COVERAGE ENDS

Please refer to Section L of the Handbook for details concerning the termination of your coverage in the event you cease to be an active employee. In certain circumstances you may be able to continue to have coverage and this is explained.

However, Section L of the handbook, entitled Termination of Benefits, was left blank when the 1989 SPD was distributed, and Pirelli never issued any materials to be placed in that space. Despite being presented to employees in 1989, the 1989 SPD was not actually implemented until 1993.

From 1986 through 1990, Armstrong and Pirelli, in an effort to reduce their salaried workforce, encouraged employees to take early retirement. After acquiring the Madison plant, Pirelli held a series of meetings in December of 1989, with groups of salaried employees to encourage eligible employees to take early retirement. During these meetings, salaried employees were given copies of the 1989 SPD and were encouraged to consider retirement before the end of 1990 to avoid anticipated increases in the cost of health insurance and other major changes in employees' health insurance benefits, effective January 1, 1991, when an

increase in the cost of health insurance was expected to go into effect.

Thereafter, in July of 1990, Pirelli put into effect an Optional Pension/Severance ("OPS") plan, again seeking to encourage early retirement by providing various incentives. Pirelli provided written descriptions of the OPS plan to its salaried employees and required all salaried employees to attend one of several mandatory meetings. Pirelli corporate headquarters also provided information about the OPS plan for Pirelli's plant managers to disseminate to salaried employees at these meetings. The information included a script for the plant manager to read to the salaried employees at the group meetings, a slide presentation and a recorded audio presentation. At these meetings, Charles Wright, the plant manager, read the scripted presentation, while Shirley Pike, the Assistant Employee Relations Manager, and a human resources liaison since 1987, made a slide presentation and a recorded audio presentation, and answered employees' questions. Salaried employees were told in the script read by plant manager Wright that "[o]ur plan affords many of you the opportunity to act now to obtain a $100/$200 deductible during retirement and not be affected by the upcoming changes in retirement insurance." (J.A. at 108.) Wright testified that he told the salaried employees that their medical benefits would not change during their retirement. Employees also received a copy of a letter from Paul C. James, Pirelli's President, and a written description of the OPS plan. These materials informed the employees that early retirees would receive the benefit of the lowest deductible ($100/$200) and maximum out-of-pocket expense amounts ($300/$400) available for salaried employees, that they would receive these reduced deductibles and maximum out- of-pocket expenses "during retirement," and that they would not be affected by the upcoming changes in retirement insurance. Employees were generally told to bring any questions they might have to Pike, and many of them did just that.

In answering employees' questions, Pike consulted the company's current SPD and personnel policy directive book, and if those sources did not provide an answer, she would call corporate headquarters for assistance. Pike testified that her actions were in conformity with the procedures established by Armstrong and Pirelli. However, Pike admitted that she did not have the OPS plan documents in her Nashville office—in fact, she had never seen or read them during her employment with Armstrong and Pirelli. According to Pike, the OPS plan documents were in the corporate office in New Haven, Connecticut and were not available for examination in the Employee Relations Department in Nashville.

When employees who were at meetings with Pike asked her how long their benefits would last, she would tell them: during retirement. In her testimony, Pike defined "retirement" to mean during their lifetimes and the lives of their spouses unless the latter remarried. (J.A. at 350.) Pike also informed employees that their benefits would remain unchanged during their lifetimes. When employees asked Pike about language in the SPD that allowed the company to alter or amend the plan, Pike stated that it was written for the benefit of Pirelli to enable the company to change insurance carriers. As Pike put it, "If I had that discussion, I am sure I would have talked about insurance carrier." (J.A. at 354-55.) Although Pike could not remember if anyone from corporate headquarters inquired to determine whether she was disseminating accurate information, she admitted that no one from the company told her that her statement that medical benefits would remain unchanged during their lifetimes and that of their spouses unless they remarried was inaccurate because Pirelli reserved the right to change the OPS plan. Pike also admitted that she did not know whether she had the role of a fiduciary relating to the dissemination of information about the OPS plan to the company's employees because she was not sure what a "fiduciary" is. Pike added that to the best of her knowledge, the company provided her with truthful

and accurate information to present to the employees and the plan beneficiaries, and that the company advised her to answer questions posed by employees about the benefits so as not to mislead them. In any event, Pike testified that she did not intentionally mislead any employees with the information that she provided to them.

However, as acknowledged by Pirelli's General Counsel and Secretary, Sherwood Willard, it would have been prudent for Pike to have read the OPS Plan and to have had a copy of it in her office because she was responsible for providing accurate information to employees about the terms and conditions thereof. Willard also admitted that if Pike told employees that the company could not change their benefits during retirement, then she was not providing accurate information. Willard further acknowledged that if Pike told employees that the language in the SPD concerning the company's right to alter or amend the OPS Plan meant that the company could change insurance carriers, then that information was also incorrect.

In January of 1993, Pirelli adopted a new health care plan setting forth the terms of its medical benefit plan for salaried employees and retirees. Subsequently, in February of 1993, all retired salaried employees received a letter advising them that Pirelli had unilaterally changed the terms of their health insurance benefits. As stated in the written stipulation of facts, Plaintiffs incurred greater out-of-pocket expenses for health care under Pirelli's 1993 plan than they would have incurred if their medical benefits had not changed. In 1994, Pirelli again revised its medical benefit plan, increasing premium contributions, deductibles and maximum out-of-pocket amounts for Plaintiffs in 1995 and 1996.

As Pirelli points out, Plaintiffs fall into four distinct groups based upon when they retired. Five Plaintiffs retired in 1986 or 1987 before Pirelli acquired the Madison plant. Those Plaintiffs are Dewey Meador, Donald Rosso, Bobby

Richardson, Roy Kemp and Vada Haston. A second group consists of Plaintiffs who retired in 1990 before the announcement of the OPS program in July 1990. These Plaintiffs are Joe Smith, Paul Skelley, Jr., and Doyle Denton. A third group of Plaintiffs retired in 1990 and 1991 under the OPS program. These Plaintiffs are Clay James, Ernest Custer, John G. Carney, Dean Carney, Ruby Panzera, Andrew Panzera, Billy Fykes, B.L. Cook and Robert Adkins. The final Plaintiff is James Wallace, who retired in 1992.

At the bench trial, Plaintiffs provided testimony about the information supplied to them at the meetings when Pirelli induced them to take early retirement or resign. Clay James, who accepted early retirement on September 28, 1990 at age 58, testified that after attending mandatory meetings about the OPS plan with other employees in the summer of 1990, he met privately with Pike to talk about his pension options. According to James, Pike told him "an insurance change . . . . will affect you if you stay here as an employee," but that he had "an opportunity to lock in on the benefits as of today regardless even if you retire and work on into 1991." Specifically, Pike told James that he would get the benefits of "a hundred/200 dollars deductible, 300/400 dollars max . . . ." (J.A. at 213-14.)

Vada Haston testified that she was offered early retirement as part of Armstrong's reduction in force program in 1986. Before accepting early retirement on May 1, 1986, Haston met with Pike who assured her that if she took early retirement, she and her husband would receive all the medical benefits that they had while she was employed, except for dental and eye care. According to Haston, Pike told her benefits would be "[f]or as long as I lived" or "for life," and that "in the case of my husband, if he should outlive me, until his death, unless he remarried." Haston testified that Pike also advised her that her husband should drop other coverage that he had; when Haston asked "over and over again if he

would be covered," Pike told her that "he would be . . . for life." (J.A. at 845-46.)

Don Rosso, who retired in June of 1987 at the age of 51, also testified that he relied upon representations that Wright and Pike made during both group meetings and private interviews in opting for early retirement by bridging three years of service. According to Rosso, Wright assured him at the group meeting that he would "get to keep [his medical benefits] for the rest of [his] life." (J.A. at 230-31.) Afterwards, Rosso met privately with Pike and asked her about medical benefits he and his wife would get upon retirement. Pike told Rosso that he would get medical benefits "at no cost" and that his wife would not lose the benefits "unless she divorced . . . or remarried." (J.A. at 232-33.)

Bobby Richardson also retired in June of 1987 at age 53. Before retiring, Richardson went with Roy Kemp to meet with Pike to discuss early retirement. Richardson testified about the meeting with Pike as follows:

> Since I had the number of the bridge that they offered me was not enough to get me to 30 years, it only got me to age 55 which left me with my pension being reduced to at least 50 percent or better, which was not much of an incentive. The only thing that was an incentive was the fact that the insurance was—the insurance coverage was better than what I had then and that my concern was with my wife who is a very—comes from a very long-lived family, and I was very concerned about providing for her after my death and made sure that this in fact did that. And [Pike] assured me that it did and so I talked to my wife that night about it and decided to accept it based on that basis even though the financial loss of my pension was bad.

(J.A. at 239.) Richardson testified that the retirement form signed by him provided: "Upon retirement you will have the

following benefits at no cost to you . . . . [Your benefits] [r]emain[ ] the same except your deductible will be decreased to a hundred dollars individual, 200 family and maximum out-of-pocket expense will be 300 individual, 400 family, effective 9-1-88." At the time Richardson retired, he did not have a "deductible of 100/200," and he had a "1200 maximum out-of-pocket expenses for me and my wife." According to Richardson, Pike assured him that after his death the same benefits would remain in effect for his wife.

Roy Kemp, who also retired in 1987 at the age of 53 under the same bridging program as Richardson and Rosso, testified that at the meeting that he and Richardson attended with Pike, she stated that "I would receive my insurance for me and my wife at no cost to me for a lifetime," except for dental and vision coverage. (J.A. at 244.)

Ruby and Andrew Panzera, who are husband and wife, retired under the July 1990 OPS program after having two individual meetings with Pike. When Mr. Panzera asked Pike if the company could change their health insurance benefits after they retired, Pike answered that "it would not change" and "would remain this way until our death." (J.A. at 255-56.) Mrs. Panzera also testified that Pike told her that she would have prescription drug coverage "for life" and that the company would pay for all of it. (J.A. at 260.)

Emery Paul Skelley, Jr., who retired in June of 1990 at the age of 51, testified that Pike told him that, upon retirement, he would lose his vision and dental coverage, but would keep his prescription drug and medical coverage as well as his retirement benefits for the rest of his life. According to Skelley, he asked Pike whether there was "anything in small print anywhere else in any kind of contract that I lose any of this after I become 65" and whether he kept the benefits coverage "until the day I die." Skelley testified that Pike replied by telling him that "I would until the day I die."

(J.A. at 268.) Relying upon Pike's representation, Skelley decided to take early retirement.

B.L. Cook, who retired under the OPS program in July of 1990 at the age of 60, testified that after the group meeting conducted by Wright and Pike, he also met privately with Pike, who assured him that he would receive medical benefits, including prescription drug benefits, "for as long as I live and if I died before my wife then she would receive those benefits as long as she lived providing that she didn't remarry." (J.A. at 280-83.)

Ernest E. Custer, who retired in October of 1990 at the age of 46, testified that after the July 1990 meetings conducted by Wright and Pike, he spoke with Pike, who told him that if he retired under the OPS program, he would keep "the 100/200 deductible and the 300/400 maximum out-of-pocket" for his entire retirement. (J.A. at 222-23.)

Joe Smith, who retired on March 1, 1990 at the age of 60, attended a meeting in December of 1989 in which Pike told him and other employees that if they were going to retire, it would be advisable to do so in 1990 because the company was changing its insurance coverage. Smith also met separately with Pike, who told him that "she thought there was a change coming and if you was [sic] going to retire, 1990 would be the time to get out." (J.A. at 247.)

Doyle Denton, who retired in April of 1990 at the age of 63, also attended a meeting in December of 1989 in which Pike advised employees that it would be to their advantage to retire in 1990 because there was going to be a change in medical coverage, effective January 1, 1991. Denton also met separately with Pike, who told him that his medical benefits "were locked in for life" and "wouldn't cost my wife and myself anything," and that, upon retirement, his deductible "would actually decrease down to 100/200 dollars." (J.A. at 273.)

Billy Fykes retired on October 1, 1990 at age 57 under the OPS program of July of 1990. Fykes testified that at the meeting conducted by Wright and Pike in July of 1990, Pike stated that those taking early retirement would receive a 100/200 deductible and "would not be affected by the upcoming changes." (J.A. at 276-78.)

Robert D. Adkins retired in January of 1991 at the age of 57 under the OPS program. After attending the meeting in July of 1990 conducted by Wright and Pike, Adkins met separately with Pike who stated that his health insurance benefits would remain at the 100/200 deductible "[a]s long as I lived." Adkins understood that "I'd have this insurance the rest of my life." (J.A. at 286- 87.)

James Wallace, who retired on September 19, 1962 at the age of 60, testified that after attending a meeting in July of 1990 regarding the OPS program, he delayed his retirement because his department manager, who needed Wallace to continue working, advised him that he would be entitled to retire later with all the same benefits if he stayed. Before retiring, Wallace had a meeting with both Pike and Robert Mische, Pike's supervisor. According to Wallace:

> Well, we talked about what my benefits would be in retirement, and I was a little reluctant and the [sic] taking it. I was two years from drawing any Social Security so I didn't know if I could live on what I was going to get. But then in talking with them they assured me that I would have my life insurance and my drug card, my insurance. And Mr. Mische himself said it would be for the rest of my life and he wished at that point that he could get in the same position, and Shirley concurred that she would be in that position. And the fact that two years had transpired since I had talked to them before and decided it was time to go.

(J.A. at 297.)

John and Dean Carney are husband and wife, both of whom retired on October 1, 1990, at ages 52 and 57, respectively. After attending the meetings presenting the OPS program, the Carneys testified that they accepted the OPS program and early retirement because "[w]e were told that [our health insurance benefits] would be locked in and would not change." John Carney testified that he and his wife also had a private meeting with Pike, who assured them that all their medical benefits "would be locked in as they were and would not change if we took this program." (J.A. at 224-25.)

Dewey L. Meador retired on May 1, 1986, at the age of 57. At a meeting with Pike before retiring, Meador was told that "I would retain my same benefits I retired with for the rest of my life and my wife would also." Meador testified that Pike did not tell him that the company could change his health insurance benefits at a later date. (J.A. at 228.)

Following a bench trial, the district court, applying the principles set forth in *Varity Corp. v. Howe,* 516 U.S. 489, 116 S.Ct. 1065, 134 L.Ed.2d 130 (1996), *Sprague v. General Motors Corp.,* 133 F.3d 388 (6th Cir.1998) (*en banc* ), and *Krohn v. Huron Memorial Hospital,* 173 F.3d 542 (6th Cir.1999), issued a decision on January 12, 2000 ruling that Pirelli breached its fiduciary duty only with regard to the two retired salaried employees who are not appellants here, Jack Jarrard and Ron Fitzsimmons. Specifically, the district court found that under *Krohn,* Jarrard and Fitzsimmons were entitled to damages from Pirelli because the company breached its fiduciary duties to them by providing inaccurate and misleading responses to their direct questions regarding ERISA plan benefits as part of early retirement incentive programs. However, as to Plaintiffs, the district court found that Pirelli did not breach its fiduciary duties to them because there was no evidence that Pike or Wright deliberately or negligently misled them in answering their direct questions,

or that Pirelli planned in advance to modify their retiree medical benefits years later.

Thereafter, Plaintiffs filed a motion seeking to amend and/or make additional findings of fact regarding the district court's January 12, 2000 order, claiming that the principles articulated in *Sprague* and *Krohn* required that the court's ruling with respect to Jarrard and Fitzsimmons be extended to them. The district court denied this motion on May 25, 2000. The parties then reached a settlement concerning damages owed to Jarrard and Fitzsimmons. The January 12, 2000 order and the May 25, 2000 order were both incorporated into a final judgment entered by the district court on October 19, 2000. It is this judgment from which Plaintiffs now appeal.

## DISCUSSION

This Court reviews findings of fact following an ERISA bench trial for clear error. *Davies v. Centennial Life Ins. Co.*, 128 F.3d 934, 938 (6th Cir.1997). The district court's legal conclusions are reviewed *de novo. Id.*

### I.

The issue on appeal is the district court's entry of judgment against Plaintiffs with regard to their ERISA breach of fiduciary duty claim.

Pursuant to § 1002(21)(A) of ERISA:

> [A] person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets . . . or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan."

29 U.S.C. § 1002(21)(A). ERISA also provides that "a fiduciary shall discharge his duties with respect to a plan

solely in the interest of the participants and beneficiaries." 29 U.S.C. § 1104(a)(1). As pointed out by this Court in *Krohn,* "ERISA imposes high standards of fiduciary duty upon administrators of an ERISA plan." 173 F.3d at 547. ERISA's fiduciary duty involves three components: (1) a duty of loyalty, requiring that "all decisions regarding an ERISA plan 'must be made with an eye single to the interests of the participants and beneficiaries;' "(2) a "prudent person fiduciary obligation," requiring that a plan fiduciary exercise his or her duties "with the care, skill, prudence, and diligence" of a prudent person acting under similar circumstances; and (3) a duty to act for the exclusive purpose of proving benefits to plan participants. *Id.* (quoting *Berlin v. Mich. Bell Tel. Co.,* 858 F.2d 1154, 1162 (6th Cir.1988)). ERISA therefore "imposes an unwavering duty on an ERISA trustee to make decisions with single-minded devotion to a plan's participants and beneficiaries and, in so doing, to act as a prudent person would act in a similar situation." *Berlin,* 858 F.2d at 1162. ERISA's fiduciary standards are derived from the common law of trusts "'bearing in mind the special nature and purpose of employee benefit plans.' "*Varity,* 516 U.S. at 506, 116 S.Ct. 1065 (quoting H.R. Conf. Rep. No. 93-1280, at 302).

A fiduciary breaches his duty by providing plan participants with materially misleading information, "regardless of whether the fiduciary's statements or omissions were made negligently or intentionally." *Krohn,* 173 F.3d at 547 (citing *Berlin,* 858 F.2d at 1163-64). "Misleading communications to plan participants 'regarding plan administration (for example, eligibility under a plan, the extent of benefits under a plan) will support a claim for a breach of fiduciary duty.' "*Drennan v. Gen. Motors Corp.,* 977 F.2d 246, 251 (6th Cir.1992) (quoting *Berlin,* 858 F.2d at 1163). "[A] misrepresentation is material if there is a substantial likelihood that it would mislead a reasonable employee in making an adequately informed decision in

pursuing disability benefits to which she may be entitled." *Krohn,* 173 F.3d at 547 (citing *In Re Unisys Corp. Retiree Med. Benefit "ERISA" Litig.,* 57 F.3d 1255, 1264 (3d Cir.1995)).

To establish a claim for breach of fiduciary duty based on alleged misrepresentations concerning coverage under an employee benefit plan, a plaintiff must show: (1) that the defendant was acting in a fiduciary capacity when it made the challenged representations; (2) that these constituted material misrepresentations; and (3) that the plaintiff relied on those misrepresentations to their detriment. *See Ballone v. Eastman Kodak Co.,* 109 F.3d 117, 122, 126 (2d Cir.1997); *Unisys,* 57 F.3d at 1266; *McMunn v. Pirelli Tire, LLC,* 161 F.Supp.2d 97, 120 (D.Conn.2001). "Whether an affirmative misrepresentation was 'material' is a 'mixed question of law and fact . . . .' [A] misrepresentation is material if there is a substantial likelihood that it would mislead a reasonable employee in making an adequately informed decision about if and when to retire." *Fischer v. Phila. Elec. Co.,* 994 F.2d 130, 135 (3d Cir.1993).

Plaintiffs in the matter at hand essentially argue that the district court applied the appropriate case law—namely, *Varity, Sprague* and *Krohn*—but applied it incorrectly. Consequently, Plaintiffs seek to have the district court's ruling in favor of Jarrard and Fitzsimmons expanded to encompass all Plaintiffs.

The Supreme Court held in *Varity* that an employer breached its fiduciary duty to former employees and retirees when it induced them to transfer their employment to a newly formed subsidiary that the employer knew was unstable. *See Varity Corp. v. Howe,* 516 U.S. at 505, 116 S.Ct. 1065. As the Court noted, "[t]he thrust of Varity's remarks [made at special meetings designed to persuade employees to transfer] . . . was that the employees' benefits would remain secure if they voluntarily transferred to [the subsidiary]." *Id.* at 494,

116 S.Ct. 1065. The Court further noted that "[a]s Varity knew, however, the reality was very different." *Id.* The Court therefore easily concluded that Varity had breached its fiduciary duty to the employees, uncontroversially finding that "[l]ying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA." *Id.* at 506, 116 S.Ct. 1065 (internal quotation omitted). Because the employer had deliberately misled its employees, the Court declined to "reach the question whether ERISA fiduciaries have any fiduciary duty to disclose truthful information on their own initiative, or in response to employee inquiries." *Id.*

In *Sprague,* this Court, sitting *en banc,* explicated the contours of an ERISA fiduciary's duty to disclose information to beneficiaries. Facing a factual scenario similar to the one involved in this case, *Sprague* considered whether General Motors ("GM") breached its fiduciary duties under ERISA by its oral and written representations to early retirees regarding its retirement program. *See* 133 F.3d at 393-94. In that case, GM, in an effort to avoid involuntary layoffs, tried to persuade employees to take early retirement. For more than two decades, GM had provided continuing health insurance benefits to salaried retirees. Although the plan documents and information booklets changed over the years, they all contained statements to the effect that basic health care coverage would be provided to retirees at GM's expense "for your lifetime." *Id.* Most of the booklets, however, also contained a reservation of rights clause, putting employees on notice that GM could amend, modify, suspend, or terminate its benefit plans at any time. *Id.* Early retirees were required to participate in an exit interview, at which many of the early retirees received plan documents, and some of the employees were orally put on notice of GM's right to amend or terminate the plan. *Id.* at 395. The "small number" of early retirees who asked specifically about future changes to health care benefits were accurately told that benefits could be changed

in the future. *Id.* In fact, as here, the plan was later modified in a way that adversely affected the retirees.

In addressing the plaintiffs' claims that GM breached its fiduciary duties by modifying the plan, this Court first noted that, although employers do not act in a fiduciary capacity when they amend or terminate a benefit plan, "'conveying information about the likely future of plan benefits' [is] a discretionary act of plan administration" giving rise to a fiduciary duty. *Id.* at 404-05 (quoting *Varity,* 516 U.S. at 504, 116 S.Ct. 1065). This Court held that, as a matter of law, GM had not breached this fiduciary duty, noting that "GM never told the early retirees that their health care benefits would be fully paid up or vested upon retirement. What GM told many of them, rather, was that their coverage was to be paid by GM for their lifetimes. This was undeniably true under the terms of GM's then-existing plan." *Id.* The Court added:

> Explanations of benefits
>
> "tend to sound promissory by their very nature. While these explanations may state a company's current intentions with respect to the plan, they cannot be expected to foreclose the possibility that changing financial conditions will require a company to modify welfare benefit plan provisions at some point in the future." [*Gable v. Sweetheart Cup Co.,* 35 F.3d 851, 857 (4th Cir.1994).]
>
> GM's failure, if it may properly be called such, amounted to this: the company did not tell the early retirees at every possible opportunity that which it had told them many times before—namely, that the terms of the plan were subject to change. There is, in our view, a world of difference between the employer's deliberate misleading of employees in *Varity Corp.* and GM's failure to begin every communication to plan participants with a caveat.

*Id.*

The employees in *Sprague* had received prior warnings about the company's right to amend or terminate the plan. In fact, some employees were reminded of that fact during their exit interviews just prior to early retirement. However, the *Sprague* court did not find these previous warnings of the employer's right to modify the plan determinative. Rather, this Court noted that ERISA contains detailed disclosure provisions regulating the contents of summary plan descriptions. *Id.* (citing 29 U.S.C. § 1022(b); 29 C.F.R. § 2520.102-3). Under these provisions, an ERISA fiduciary need not disclose its reservation of the right to amend or modify benefits in plan documents. *Id.; see also Adams v. Avondale Indus., Inc.*, 905 F.2d 943, 949 (6th Cir.1990). We then noted that no court of appeals has imposed fiduciary liability for a failure to disclose information that is not required to be disclosed, and that at least three circuits have held that there is no fiduciary duty to disclose planned changes in benefits or even a planned termination of the plan before those actions become official. *Id.* at 406 (citing *Pocchia v. NYNEX Corp.*, 81 F.3d 275, 278 (2d Cir.1996); *Payonk v. HMW Indus., Inc.*, 883 F.2d 221, 229 (3d Cir.1989); *Stanton v. Gulf Oil Corp.*, 792 F.2d 432, 435 (4th Cir.1986)). This Court therefore concluded that "there can be no fiduciary duty to disclose the *possibility* of a future change in benefits." *Id.*

Pirelli's liability to Jarrard and Fitzsimmons, which Plaintiffs wish to have extended to themselves, stems from the last paragraph of the *Sprague* court's analysis of the fiduciary duty issue, wherein this Court stated:

> Had an early retiree asked about the possibility of the plan changing, and had he received a misleading answer, or had GM on its own initiative provided misleading information about the future of the plan, or had GM been required by ERISA or its implementing regulations to forecast the future, a different case would have been

> presented. But we do not think that GM's accurate representations of its current program can reasonably be deemed misleading. GM having given out no inaccurate information, there was no breach of fiduciary duty.

*Id.*

Following the bench trial in the matter at hand, the district court concluded that *Sprague* shielded Pirelli from liability as to Plaintiffs, but not as to Fitzsimmons and Jarrard, because the latter two had posed direct questions to Pirelli's contact person, Pike, about the reservation of rights clause in the plan documents, asking what effect the clause might have on their future benefits. In response, Pike told the employees not to worry about that provision and inaccurately explained that the language only meant that the employer could change insurance carriers. Although there was no evidence that Pike deliberately misled Jarrard and Fitzsimmons, the district court held that her negligently rendered misleading responses to direct questions about the effect of the reservation of rights clause on future benefits gave rise to fiduciary liability under *Krohn.*

In *Krohn,* this Court held that a plan administrator breached its fiduciary duty to a participant by not providing complete and accurate information in response to the participant's questions about available benefits. The participant was an employee who had been in a car accident. *Krohn,* 173 F.3d at 545. At the time of her accident, Krohn was eligible for both short-term and long-term disability benefits. The short-term benefits were available on the fifteenth day of an injury up to a maximum of $200 per week, for up to twenty-six weeks. The long-term benefits were available on the 180th day of an injury up to a maximum of $3000 per month, until age sixty-five (twenty-three years in Krohn's case). When asked about what benefits would be available to Krohn, however, a personnel assistant responded only that short- term disability was available and that most

employees involved in automobile accidents found it advantageous to take short-term disability and recover under their automobile insurance for lost wages. *Id.* at 546. Krohn elected this option. Three years later, her benefits under her auto insurance expired, and she applied for long-term disability benefits under the plan. Under the terms of the policy, however, Krohn had been obligated to give notice within thirty days of the accident of her intent to apply for long-term benefits, and her application was denied as untimely. *Id.*

We then held as follows:

> Our review of the record thus reveals that [the fiduciary] received notice repeatedly that the plaintiff would be eligible for and would need long-term disability benefits. Furthermore, [the fiduciary] knew that in order to secure her right to long-term disability benefits, Krohn was required by the UNUM policy to submit a claim within 30 days of the occurrence of a loss covered by its policy, or as soon thereafter as is reasonably possible, and to provide proof of disability within 90 days of September 17, 1992, the date on which the 180-day elimination period ended. A prudent fiduciary acting in the best interest of its beneficiary would have advised Krohn that failure to submit a claim and proof of loss to UNUM in a timely fashion would render her ineligible to receive long-term disability benefits.

*Krohn,* 173 F.3d at 549-50.

In reaching this conclusion, we noted that "a fiduciary breache[s] its duties by materially misleading plan participants, regardless of whether the fiduciary's statements or omissions were made negligently or intentionally." *Id.* at 547 (citing *Berlin,* 858 F.2d at 1163-64). Furthermore, the Court approved of cases from other circuits holding that "once an ERISA beneficiary has requested information from an ERISA fiduciary who is aware of the beneficiary's status

and situation, the fiduciary has an obligation to convey complete and accurate information material to the beneficiary's circumstance, *even if that requires conveying information about which the beneficiary did not specifically inquire.*" *Id.* (emphasis added; citations omitted). The Court agreed with other circuits that "the 'duty to inform is a constant thread in the relationship between beneficiary and trustee; it entails not only a negative duty not to misinform, but also an affirmative duty to inform when the trustee knows that silence might be harmful.' "*Id.* at 548 (quoting *Bixler v. Cent. Pa. Teamsters Health & Welfare Fund,* 12 F.3d 1292, 1300 (3d Cir.1993)). We therefore held that the fiduciary breached its duty on the basis of its negligent omission, that is, by failing to inform Krohn about her eligibility for long-term benefits after Krohn inquired generally about what benefits were available, despite the fact that Krohn did not specifically ask about long-term benefits. *Id.* at 549.

Relying on *Krohn,* Plaintiffs suggest that Pirelli breached its fiduciary duty by not responding completely and accurately to Plaintiffs' questions about their health benefits, particularly about whether those benefits would continue during retirement. They argue that ten Plaintiffs—Clay James, Vada Haston, Don Rosso, Bobby Richardson, Roy Kemp, Andrew and Ruby Panzera, Paul Skelley, B.L. Cook, and Ernest Custer—all testified that they, like Jarrard and Fitzsimmons, addressed direct questions to Pirelli's representatives, primarily Pike, and received misleading information in response. They further argue that all other Plaintiffs should recover too, despite never asking specific questions, because they were also provided with inaccurate, incomplete, and misleading information.

The district court found that Fitzsimmons asked about the reservation of rights after reading about it in an article and that Jarrard asked about it after reviewing his handbook. Both men were inaccurately told that they should not worry

about the reservation of right, because it only gave the company the right to change insurance carriers. The district court was correct to conclude that, under *Krohn,* Pirelli was under a fiduciary obligation to provide complete and accurate answers to Fitzsimmons's and Jarrard's questions about the reservation of rights provision, and that it failed to do so. The district court also found that no plaintiff presented evidence that Pirelli deliberately misled employees or retirees, and that any statements by Pirelli suggesting that retirees' benefits would continue "for life" were true under the plan as it existed at that time and as it had existed since 1969. Furthermore, the court found (and Plaintiffs admitted) that there was no evidence suggesting that either Armstrong or Pirelli was planning to modify or terminate medical benefits in 1993.

II.

In determining whether Pirelli breached its fiduciary duty to Plaintiffs, we begin with an analysis of *Sprague,* where this Court stated:

> Had an early retiree asked about the possibility of the plan changing, and had he received a misleading answer, *or had GM on its own initiative provided misleading information about the future of the plan,* or had GM been required by ERISA or its implementing regulations to forecast the future, *a different case would have been presented.* But we do not think that GM's accurate representations of its current program can reasonably be deemed misleading. GM having given out no inaccurate information, there was no breach of fiduciary duty.

133 F.3d at 405-06 (emphasis added). As can be discerned, *Sprague* analyzes a possible breach of fiduciary duty in terms of three disjunctive conditions. A breach of fiduciary duty occurs if (1) an early retiree asks a plan provider about the possibility of the plan changing and receives a misleading or inaccurate answer or (2) a plan

provider *on its own initiative* provides misleading or inaccurate information about the future of the plan or (3) ERISA or its implementing regulations required the employer to forecast the future and the employer failed to do so.

While *Sprague* concluded that there was no breach of fiduciary duty because none of these conditions was met, *Krohn* found that the first condition was satisfied when the plan administrator breached its fiduciary duty by not providing complete and accurate information in response to the participant's questions about available benefits. However, neither case addressed the situation presented when an employer *on its own initiative* provides false and misleading information to employees about future benefits of a plan.

This factual scenario was presented in *Unisys* where the Third Circuit affirmed the district court's order finding that the plaintiffs could maintain a claim for breachof fiduciary duty under ERISA since "Unisys affirmatively and systematically represented to its employees that once they retired, their medical benefits would continue for life." *In re Unisys Corp.*, 57 F.3d at 1264. As the Third Circuit noted, "when a plan administrator affirmatively misrepresents the terms of a plan or fails to provide information when it knows that its failure to do so might cause harm, the plan administrator has breached its fiduciary duty to individual plan participants and beneficiaries." *Id.*

A similar situation was also addressed in *McMunn v. Pirelli Tire,* which dealt with whether Pirelli breached its fiduciary duty to its employees when it materially misled them about retirement medical benefits. 161 F.Supp.2d at 97. As in this case, Pirelli, as part of its plan to reduce its salaried workforce by about ten percent, offered the OPS plan in July of 1990 to induce voluntary retirement. Pirelli affirmatively represented to its employees that "the single/family deductible under the medical plan will be $100/$200 during

the individual's retirement." *Id.* at 108. Similar to this case, a Pirelli representative, in a prepared script, stated that one of the benefits of the OPS retirement plan was to allow retirees "the opportunity to act now to obtain a $100/200 deductible during retirement and not be affected by the upcoming changes in retirement insurance." *Id.* The principal focus of the dispute therefore was whether Pirelli's statements about the future benefits of the plan "constituted an affirmative misrepresentation by defendant that it would not exercise its right to alter or terminate these benefits during the retiree's lifetime and until the death or remarriage of his spouse, or was simply a description of the then-current policy and intention, which as a matter of law could be changed at a later date absent vesting language." *Id.* at 123.

The district court noted in *McMunn* that while "any employees who were expressly told by a person acting in a fiduciary capacity that their retirement benefits could not be changed during retirement received affirmative misrepresentations," there was no material misrepresentation when a fiduciary made "the simple statement" that "benefits 'will continue in retirement' without any durational limit." *McMunn*, 161 F.Supp.2d at 123. The court nonetheless recognized that a more troublesome question was presented by "the alleged representations by Armstrong/Pirelli that benefits would continue during retirement for the lifetime of the plaintiffs." *Id.* The district court noted that in *Unisys,* the Third Circuit ruled that the reservation of rights provision did not protect an employer from liability for a breach of fiduciary duty "where a company has deliberately fostered the belief that retirement benefits are lifetime benefits, and is aware that its employees incorrectly--if understandably--believe that their medical benefits will continue unchanged for the duration of their retirement." *Id.* at 124 (citing *Unisys,* 57 F.3d at 1265 n. 15). Thus, relying upon *Unisys,* the district court in *McMunn* found that "by continuing to assure plaintiffs that they would receive the same benefits in

retirement until their death without reference to the reservation of rights, defendant failed to convey complete and accurate information, and instead provided materially misleading information," upon which three of the plaintiffs detrimentally relied. *Id.* Accordingly, the district court in *McMunn* held that Pirelli breached its fiduciary duty to these plaintiffs when it materially misled them by "deliberately foster[ing] the belief that retirement benefits are lifetime benefits." *Id.*

Turning back to *Sprague,* although we found that there was no breach of fiduciary duty where GM had issued booklets containing a reservation of rights clause, *Sprague* does not stand for the proposition that a reservation of rights provision in a SPD necessarily insulates an employer from its fiduciary duty to provide "complete and accurate information" when that employer *on its own initiative* provides inaccurate and misleading information about the future benefits of a plan. Indeed, *Sprague* explicitly allows for a breach of fiduciary duty claim under such a circumstance. Were it otherwise, an employer or plan administrator could provide, on its own initiative, false or inaccurate information about the future benefits of a plan without breaching its fiduciary duty under ERISA, simply because of the existence of a reservation of rights provision in the plan. However, this would be contrary to the basic concept of a fiduciary duty, which "entails not only a negative duty not to misinform, but also an affirmative duty to inform when the trustee knows that silence might be harmful." *Krohn,* 173 F.3d at 548; *see also Mullins v. Pfizer, Inc.,* 23 F.3d 663, 668 (2d Cir.1994) (noting that "when a plan administrator speaks, it must speak truthfully").

Thus, with respect to the situation presented when an employer on its own initiative disseminates false and misleading information about a benefit plan, the position of the Sixth Circuit is aligned with that of the Third Circuit in *Unisys.* As in *Unisys,* where the Third Circuit found that the

reservation of rights provision did not protect an employer from liability for a breach of fiduciary duty when the employer deliberately fostered the belief that retirement benefits are lifetime benefits, *Sprague* does not stand for the proposition that a reservation of rights provision insulates an employer from liability for a breach of its fiduciary duty under ERISA when the employer disseminates materially false or misleading information on its own initiative about the future benefits of a plan. In short, an employer or plan administrator fails to discharge its fiduciary duty to act solely in the interest of the plan participants and beneficiaries when it provides, on its own initiative, materially false or inaccurate information to employees about the future benefits of a plan. Under these circumstances, it is not necessary that employees ask specific questions about future benefits or that they take the affirmative step of asking questions about the plan to trigger the fiduciary duty. The breach of fiduciary duty occurs when the employer or plan administrator on its own initiative provides misleading information about the future benefits of a plan.

In the instant case, both conditions (1) and (2) outlined in *Sprague* are at issue. Condition (1) applies because some Plaintiffs specifically put questions to Pike of Pirelli about the plan, and received misleading and inaccurate answers to their inquiries. But condition (2) also applies because Pirelli on its own initiative provided, through its representatives in Madison, Tennessee, misleading or inaccurate information about the future benefits of the plan.

Here, the district court erred in finding that Pirelli did not breach its fiduciary duty as to all Plaintiffs. Pirelli's breach of its fiduciary duty occurred when the company provided, on its own initiative, materially misleading and inaccurate information about the plan benefits to Plaintiffs in group meetings and exit interviews. As already indicated, Pirelli's fiduciary duty to Plaintiffs was triggered even though not all

Plaintiffs asked specific questions about the future benefits of the plan. As the district court found, Pike, Pirelli's human resources representative at the plant in Madison, Tennessee, and Wright, the plant manager, provided inaccurate and misleading information to Plaintiffs about their retirement benefits during group meetings and exit interviews conducted in connection with Pirelli's effort to reduce its salaried workforce. Both Pike and Wright falsely informed the salaried employees, including Plaintiffs, that their medical benefits would not change during retirement. However, as recognized by Willard, Pirelli's General Counsel and Secretary, Pike provided inaccurate information when she indicated to employees that the company could not change their benefits during retirement. Thus, it is clear that Pirelli, on its own initiative, provided misleading and inaccurate information about the plan benefits to Plaintiffs. Further, the false and inaccurate information provided by Pike and Wright to Plaintiffs constituted material misrepresentations because there was a substantial likelihood that it would mislead a reasonable employee in making an adequately informed decision. *See McMunn,* 161 F.Supp.2d at 120. And Plaintiffs relied upon these materially misleading representations to their detriment in deciding to take early retirement. Thus, Plaintiffs established that Pirelli breached its fiduciary duty to them.

Alternatively, we also find that those Plaintiffs who specifically asked Pike about the future benefits of the plan, but received materially misleading, inaccurate or incomplete answers in response to their inquiries, established an independent ground for their breach of fiduciary duty claims. Specifically, we note that Plaintiffs Clay James, Vada Haston, Don Rosso, Bobby Richardson, Roy Kemp, Andrew and Ruby Panzera, Emery Paul Skelley, B.L. Cook, and Ernest Custer established their breach of fiduciary duty claims on this basis because they asked questions about the future benefits of the plan and received inaccurate answers to their

queries, or responses that were less than "complete and accurate information material to the beneficiary's circumstance." *Krohn,* 173 F.3d at 547.

## CONCLUSION

Because Pirelli, on its own initiative, provided all Plaintiffs with materially misleading or inaccurate information about the future benefits of the plan and because Pirelli provided ten Plaintiffs with materially misleading or inaccurate information in response to their direct questions about the possibility of their benefits changing under the OPS plan, Plaintiffs thus established that Pirelli breached its fiduciary duty to them. We therefore REVERSE the district court as to all Plaintiffs and REMAND the case for further proceedings consistent with this opinion.

## APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

[Filed Jan. 12, 2000]

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No. 3-95-0421
JUDGE ECHOLS

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CLAY K. JAMES, JACK JARRARD, JAMES E. WALLACE, DON ROSSO, BENNIE R. MARBERRY, MARIE E. TAYLOR, JOE H. SMITH, EMERY PAUL SHELLY, JR., LARRY A. ROBERTS, MARY LOUISE SETTLE, BOBBY E. RICHARDSON, DEWEY L. MEADOR, PAUL D. NOLEN, JOHN A. KIRKPATRICK, RON FITZSIMMONS, B.L. COOK, ROY KEMP, BILLY H. FYKES, DOYLE S. DENTON, JOHN G. CARNEY, DEAN B. CARNEY, ROBERT D. ADKINS, JOHN D. TAYLOR, ERNEST E. CUSTER, VADA D. HASTON, ANDREW PANZERA AND RUBY PANZERA,

*Plaintiffs*,

v.

PIRELLI ARMSTRONG TIRE CORPORATION,

*Defendant*.

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## MEMORANDUM

This is an action brought by Plaintiffs, twenty-seven former employees [1] of Defendant Pirelli Armstrong Tire Corporation ("Pirelli"), alleging that they are entitled to relief based on Defendant's violations of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001-1461. In Count I of their Fifth Amended Complaint ("Complaint"),

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[1] This Court has dismissed the claims of John D. Taylor, John A. Kirkpatrick, Larry A. Roberts, and Marie Taylor.

Plaintiffs claim that Defendant's decision to modify or terminate Plaintiffs' benefits is a breach of the benefits plan and a violation of ERISA. Count II alleges that Defendant breached fiduciary duties owed to Plaintiffs. Count III seeks declaratory judgment that Defendant must provide the benefits sought in this action. Count IV seeks relief based on a theory of equitable estoppel. In Count V Plaintiffs claim that Defendant failed to supply written information regarding benefit plans as required under federal law. Finally, Plaintiffs, in Count VI, contend that they are entitled to recovery on a breach of contract theory.

This Court in a prior Order granted Defendant's Motion to Dismiss and/or for Summary Judgment with respect to Count I as to all Plaintiffs, and Count V as to all Plaintiffs but Jack Jarrard. The Court denied Defendant's Motion with respect to Plaintiff's [sic] remaining claims. Subsequent to the decision of the United States Court of Appeals for the Sixth Circuit in *Sprague* v. *General Motors Corporation*, 133 F.3d 388 (6th Cir. 1998) (en banc), Defendant filed a Renewed Motion for Summary Judgment, which this Court granted as to Count IV only. Thus, the case proceeded to trial on Count II for breach of fiduciary duties, Count III seeking declaratory judgment of entitlement to benefits based on liability under any one of the other remaining counts, Count *VI* for breach of contract, and Count V for failure to provide information to Jack Jarrard alone. Plaintiffs continue to assert their claim for equitable estoppel, contending that this Court's summary judgment decision was not a final order and thus, could be reconsidered at any time prior to entry of a final judgment.

Plaintiffs claims were tried before this Court, without a jury, on April 26, 28, and 29, 1999. The Court bifurcated the trial in this action, with the initial phase limited to questions of liability only on the individual claims of the twenty-three remaining plaintiffs. Having considered the stipulations of the parties and all of the evidence introduced at trial, the

Court makes the following findings of fact and conclusions of law on the questions of liability in accordance with Rule 52 of the Federal Rules of Civil Procedure:

## FINDINGS OF FACT

Pirelli is a Delaware corporation headquartered in New Haven, Connecticut, engaged in the production of tires at several manufacturing plants, and formerly operated a tire production plan in Madison, Tennessee. All of the Plaintiffs were salaried employees at the Madison plant. The Madison plant originally was owned by Gates Rubber Company ("Gates"). In 1973, the plant was purchased by Armstrong Rubber Company ("Armstrong").

### A. *The Plan Documents*

Armstrong provided medical benefits for its salaried employees and retirees through group insurance contracts with Connecticut General Life Insurance Company, including the 1980 policy, the 1984 policy, and the 1988 policy. Under both Armstrong and Pirelli, the policies were kept at the corporate offices in New Haven, Connecticut.

In 1981, Armstrong gave each of its salaried employees a summary plan description ("SPD") which described their medical benefits. The 1980 policy gave Armstrong the right to discontinue the policy as of any premium due date by providing the insurance company with advance written notice. The policy also could be amended if approved by both Armstrong and the insurance company. The 1981 SPD included a provision notifying the employees that the medical benefits could be terminated by Armstrong. The 1984 policy had the same provisions as the 1980 policy with regard to cancellation and amendment. Armstrong did not issue a new SPD after the 1984 policy became effective. Another insurance contract became effective in 1988, which also allowed changes to the policy through signed amendments, as well as cancellation of the policy.

In 1988, Pirelli purchased the Armstrong Rubber Company. In 1989, the year after Pirelli acquired the Madison plant, Pirelli distributed a new SPD to its employees. Pirelli was the new policy holder in place of Armstrong. In the 1989 SPD, Pirelli reserved the right to modify or terminate the medical benefit plan at any time. The SPD was divided into sections. Under the section concerning the Comprehensive Medical Insurance Plan, the 1989 SPD provided:

D. WHEN YOUR COVERAGE ENDS

Please refer to Section L of the Handbook for details concerning termination of coverage under this Plan.

Likewise, in the section concerning the Prescription Drug Plan, the 1989 SPD provided,

C. WHEN COVERAGE ENDS

Please refer to Section L of the Handbook for details concerning the termination of your coverage in the event you cease to be an active employee. In certain circumstances you may be able to continue to have coverage and this is explained.

In December of 1989, Pirelli held a series of meetings with groups of salaried employees. During these meetings, employees were given the new SPD and encouraged to consider retirement during 1990 to avoid an anticipated increase in the cost of health insurance that was scheduled to go into effect in January of 1991. In July of 1990, Pirelli implemented its Optional Pension/Severance Plan ("OPS"), which provided incentives for retirement. All salaried employees at Pirelli were required to attend one of several mandatory meetings about the OPS program. At these meetings, the employees received a copy of a letter from the President of Pirelli and a description of the OPS program. In August 1990, a memorandum was mailed to all employees reminding them of the objectives of the OPS program. The

memorandum also stated that "employees involuntarily released after August 31, 1990, will not be eligible £or the enhanced severance pay, medical benefits treatment, and special retirement features."

When the 1989 SPD was distributed, Section L of the Handbook, entitled Termination of Benefits, was empty. Pirelli never issued any supplemental materials to be placed in Section L of the 1989 SPD. At the Madison plant, the 1989 SPD was only issued to active employees, not retirees. Thus, Ron Fitzsimmons, Dewey Meador, Vada Haston, Bobby Richardson, Roy Kemp, and Don Rosso, all of whom retired in 1986 and 1987, never received the 1989 SPD. Doyle Denton, who retired in 1990, only received the binder for the 1989 SPD; he never received any information to place inside his binder before his retirement. Nine of the plaintiffs retired early under the OPS program. Eight of them received a document at their exit interviews that described their medical coverage during retirement as being "$100/$200 deductible" and "$300/$400 maximum out of pocket." Prescription drug coverage during retirement was to remain the same.

Pirelli implemented its own self funded medical benefits plan for salaried employees in 1993, effective as of April 1. All salaried retirees received a letter in February of 1993, advising them of the change in terms to their health insurance benefits and inviting them to attend a meeting to explain the changes.

Beginning in 1969 and continuing until 1993, although changes were made from time to time in medical benefits for both active and retired salaried employees, neither Gates nor Armstrong nor Pirelli implemented changes in medical benefits that were adverse to those salaried employees who had already retired. Instead, until the changes in 1993 that gave rise to this action, the practice by Pirelli and its

predecessors at the Madison plant had been to maintain medical benefits for salaried retirees at the same level at which they retired or better without any adverse change.

B. *The Optional Pension/Severance Program*

Armstrong and Pirelli reduced salaried personnel employment at various locations in 1986, 1987, 1989, and 1990. Pirelli's Optional Pension/Severance ("OPS") program in July 1990 was designed to effect a voluntary staff reduction of salaried employees by providing various incentives. As explained above, Pirelli provided written descriptions of the OPS program to its salaried employees. In addition, corporate headquarters furnished information to Pirelli's plant managers for presentation of the OPS program to the salaried employees. That information consisted of a script for the plant manager to read to the salaried employees at group meetings, a slide presentation, and a recorded audio presentation. Charles Wright, who was at that time the manager of the Madison plant, read without deviation the script provided for presentation of the program to salaried employees, and Shirley Pike showed the slides and played the audio portion of the presentation.

The employees were told to see Ms. Pike if they had any questions. Ms. Pike worked with both hourly and salaried employees, helped with hiring, and supervised employee benefits. In answering employee questions, Ms. Pike consulted the current SPD and the personnel policy directive book. If those sources did not provide the answer, she called corporate headquarters. Ms. Pike never had the medical insurance Plan documents in her office during her employment with Armstrong and Pirelli, and never saw or read the Plan itself. She did not know whether the Plan was consistent with the corresponding SPD. Ms. Pike testified that her actions complied with the procedure set forth by Armstrong and Pirelli.

Ms. Pike met with all salaried employees before their retirement. When Plaintiffs asked how long their benefits lasted, Ms. Pike told them "during retirement." She defined "during retirement" as during their lifetimes and the lives of their spouses unless they remarried. When two of the Plaintiffs asked her about language in the 1989 SPD that allowed the company to alter or amend the benefits, Ms. Pike told them that the language allowed the company to change insurance carriers.

When Pirelli's OPS program was announced in July 1990, it was made available as an incentive for eligible employees to retire or resign. Three categories of employees could avail themselves of various incentives under OPS. Under Option I, those employees who were already eligible to retire with an unreduced pension would receive, in addition to the normal pension, normal retiree medical benefits, and normal retiree life insurance, enhanced benefits in the form of extended vision and dental coverage for ninety days, and severance pay of one week per year of service. Under Option II, those employees who needed either five years or less of service or five years or less of age to become eligible for an unreduced pension would have their services or ages "bridged." As a result, instead of a reduced pension, those employees could proceed to retire early with the enhanced benefits of an unreduced pension, as well as extended vision and dental coverage for ninety days after they retired, in addition to normal retiree medical benefits and retiree life insurance. Under Option III, those employees who could not meet the requirements for a full pension or for a bridged unreduced pension could retire with a reduced pension and receive, in addition to normal retiree medical and life insurance, enhanced benefits in the form of severance pay of two weeks for each year of service and extended vision and dental coverage for ninety days. Also under Option III, those employees who were not yet eligible to receive a reduced

pension could voluntarily separate from service and receive enhanced benefits in the form of extended company paid benefits and severance pay of two weeks per year of service.

At the time of the announcement of the OPS program in July 1990, deductibles and maximum out-of-pocket costs under the Pirelli medical benefit plan for salaried employees was determined by the individual salaries of the employees. The lowest-paid salaried employees received the lowest deductibles and out-of-pocket maximums, while higher-paid employees incurred higher deductibles and out-of-pocket maximums. Until 1991, a salaried employee who retired continued to receive the same medical benefits, but with the deductible and out-of-pocket maximums reduced to the lowest level then in effect for active employees. Beginning in January 1991, however, the practice of reducing a salaried employee's deductibles and out-of-pocket maximums upon retirement to the lowest available level was changed. Those salaried employees who retired after January 1, 1991, continued as retirees to bear the same deductibles and out-of-pocket maximums as they had as active employees, rather than having their deductibles and out-of-pocket maximums reduced to the lowest available levels in effect at the time of retirement.

The written description given to the salaried employees to explain the OPS program contained a section describing "special group insurance coverages." As that section made clear, the medical and prescription drug benefits under OPS were the normal medical and prescription drug benefits. The enhanced benefit coverages were dental and vision care coverages for ninety days beyond the retirement date. The written description of the OPS program, as well as the slide presentation, showed that the deductibles and out-of-pocket maximums under the medical benefits plan available to retirees who accepted the OPS program were not an enhanced

benefit, but were the same deductibles and out-of-pocket maximums that retirees in 1990 otherwise would have received.

C. *New Medical Benefits Plan*

In January 1993, Pirelli adopted a newly-drafted health care plan setting forth the terms of its new medical benefits plan for salaried employees and retirees. In February 1993, all salaried retirees received information inviting them to attend a series of meetings during which changes in their medical benefits would be explained. Plaintiffs contend that under Pirelli's new plan they have incurred higher out-of-pocket costs for health care than they would have incurred if their medical benefits had not been changed in 1993. Pirelli implemented a revised version of its plan in 1994. Premium contributions, deductibles, and maximum out-of-pocket amounts for Plaintiffs increased in 1995 and 1996.

D. *Plaintiffs' Accounts*

The twenty-three plaintiffs may be divided into five categories:

(i) six of the plaintiffs retired in 1986 or 1987, before Pirelli acquired the Madison plant: (1) Dewey Meadow; (2) Ron Fitzsimmons; (3) Donald Rosso; (4) Bobby Richardson; (5) Lee Roy Kemp; and (6) Vada Haston;

(ii) four of the plaintiffs retired in 1990 prior to the announcement of the OPS program in July 1990: (1) Jack Jarrard; (2) Joe Smith; (3) Paul Skelly, Jr.; and (4) Doyle Denton;

(iii) nine of the plaintiffs retired in 1990 or 1991 under the OPS program: (1) Clay James; (2) Ernest Custer; (3) John G. Carney; (4) Dean Carney; (5) Ruby Panzera; (6) Andrew Panzera; (7) Billy Fykes; (8) B.L. Cook; and (9) Robert Atkins;

(iv) one of the plaintiffs, James Wallace, retired in 1992; and

(v) three of the plaintiffs did not retire, but ceased working due to disabilities: (1) Bennie Marberry; (2) Paul D. Nolen; and (3) Mary Louise Settle.

(i). *1986 and 1987 Retirees*

Mr. Meador, Mr. Fitzsimmons, Mr. Richardson, Mr. Kemp, and Ms. Vaston were told by Ms. Pike that they and/or their spouses would retain their medical benefits for life. Mr. Rosso was told by Charles Wright that he and his spouse would retain his benefits for life. None of the 1986 and 1987 retirees have any information that Ms. Pike or Mr. Wright deliberately misled them or that Armstrong or Pirelli planned in advance to modify their retiree medical benefits years later.

During a meeting with Ms. Pike, Mr. Fitzsimmons asked about the reservation of right to change benefits which he had seen in an "article." Ms. Pike told him "don't worry about that" and explained that the language allowed the company to change insurance carriers. Another Pirelli employee, Russ Weymouth, was standing in the doorway during this exchange. Mr. Fitzsimmons asked Mr. Weymouth if Ms. Pike was correct and Mr. Weymouth-agreed with Ms. Pike.

(ii). *Pre-OPS 1990 Retirees*

Mr. Jarrard, Mr. Skelly, and Mr. Denton were told by Ms. Pike that they and/or their spouses would retain their medical benefits for life. None of the Pre-OPS 1990 retirees have any information that Ms. Pike or Mr. Wright deliberately misled them or that Armstrong or Pirelli planned in advance to modify their retiree medical benefits years later. After reviewing his Salary Employees Benefit Handbook, Mr. Jarrard was concerned about the company's reservation of the right to change benefits and asked Ms. Pike for an explanation. Ms. Pike said that the language did not concern him

and that it gave the company the right to change insurance companies. She told him, "don't be concerned about that" and that the language was "for her benefit."

(iii). *1990-91 OPS Retirees*

Mr. James, Mr. Custer, Mr. Carney, Mrs. Carney, Mrs. Panzera, Mr. Panzera, Mr. Cook, and Mr. Adkins were told by Ms. Pike that they and/or their spouses would retain their medical benefits for life. None of the 1990-91 OPS retirees have any information that Ms. Pike or Mr. Wright deliberately misled them or that Armstrong or Pirelli planned in advance to modify their retiree medical benefits years later.

(iv). *1992 Retiree*

Mr. Wallace was told by Ms. Pike and her supervisor, John Mische, that he would retain his medical benefits for life. He has no information that Ms. Pike or Mr. Mische deliberately misled him or that Armstrong or Pirelli planned in advance to modify his retiree medical benefits years later.

(v). *Disability Cases*

Mr. Marberry, Mr. Nolen, and Ms. Settle did not retire, but ceased working due to disabilities. Mr. Nolen and Ms. Settle were assured by Ms. Pike that while they disabled [sic], their medical benefits would remain the same. None of the disabled former employees have any information that Ms. Pike deliberately misled them regarding the medical benefits they would receive.

E. *Plaintiffs' Theories*

Plaintiffs allege that Defendant breached its fiduciary duties as plan administrator by inducing Plaintiffs to retire early with representations that they would not be affected by upcoming changes in health insurance when Defendant knew that it could amend or terminate the plan at any time. Plaintiffs contend that the facts of the present action can be

distinguished from the facts of *Sprague* on which Defendant relies. In support of their contention, Plaintiffs assert that Defendant, in addition to failing to disclose its right to modify or terminate plan benefits, provided inaccurate and misleading responses to direct questions by Plaintiffs regarding the future benefits of the plan. Plaintiffs assert that Defendant's inaccurate responses, whether provided deliberately or negligently, constitute a breach of fiduciary duties by Defendant under the Sixth Circuit's recent decision in *Krohn v. Huron Memorial Hospital*, 173 F.3d 542 (6th Cir. 1999), wherein the court held: "[a] fiduciary breaches its duties by materially misleading plan participants, regardless of whether the fiduciary's statements or omissions were made negligently or intentionally." *Id.* at 547.

Plaintiffs also allege that they entered into bilateral contracts with Defendant for lifetime medical benefits, which the Defendant breached. Plaintiffs claim that Defendant's conduct was tantamount to fraud and thus supports a claim for breach of contract based on non-plan documents and communications.

At trial, Plaintiffs continued to assert their claim for equitable estoppel, contending that this Court's summary judgment decision was not a final order and thus, could be reconsidered at any time prior to entry of a final judgment. Plaintiffs disagree with the Court's earlier finding that the plan documents are unambiguous, asserting that the 1981. SPD contained an ambiguous reservation of the right to amend and the 1989 SPD referred employees to an empty Section L for information regarding when coverage would end. Thus, Plaintiffs maintain that principles of equitable estoppel should apply as Plaintiffs justifiably relied on Defendant's misrepresentations regarding whether upcoming changes in health insurance would affect early retirees.

Plaintiffs further maintain that Defendant is collaterally estopped from arguing that equitable estoppel does not apply

to this case based on Judge Nixon's decision in *United Rubber, Cork, Linoleum and Plastic Workers of Americans, et al. v. Pirelli Armstrong Tire Company, et al.*, 873 F. Supp. 1093 (M.D. Tenn. 1994). *United Rubber* is an action filed by hourly employees of Defendant, challenging its decision to terminate their retiree health benefits under a variety of theories, including equitable estoppel. After a bench trial, Judge Nixon ruled in favor of the plaintiffs. Plaintiffs in the present action contend that the elements of collateral estoppel have been met and Defendant should be collaterally estopped from relitigating the issue of equitable estoppel.

Finally, Plaintiff Jack Jarrard claims that Defendant failed to supply certain written information to him in violation of 29 U.S.C. § 1024(b) (4).

F. *Defendant's Theories*

With regard to Plaintiffs' breach of fiduciary duties claim, Defendant maintains that ERISA does not require disclosure by an employer that a benefit plan is subject to amendment or termination. Citing *Sprague*, Defendant contends that its statements that benefits are payable "for life," if true under the existing benefit plan terms, does not constitute a breach of fiduciary duty. Defendant further contends that in order for Plaintiffs to prevail under this theory, each Plaintiff must prove that Defendant deliberately misled or induced him or her to retire earlier than he or she otherwise would have retired, and he or she did in fact retire early in reliance on those deliberate misrepresentations. Defendant asserts that no evidence was presented at trial from which the Court could find that Defendant deliberately misled Plaintiffs.

With regard to Plaintiffs' breach of contract claim, Defendant asserts that the absence of any deliberate misrepresentation on the part of Defendant disposes of any possible fraud-based breach of contract claim. Defendant contends that the Sixth Circuit has consistently refused to recognize

oral modifications to written plan documents as well as employee "statements of acceptance" as modifications to the plan "absent a particularized showing of conduct tantamount to fraud." *Sprague*, 133 F.3d at 403.

With regard to Jack Jarrard's claim, Defendant points out that because Plaintiff offered no proof in support of his claim at trial, the Court must find in favor of Defendant.

## CONCLUSIONS OF LAW

Plaintiffs' claims for relief present five primary issues to be resolved: (1) whether Defendant breached fiduciary duties owed to Plaintiffs; (2) whether Defendant breached bilateral contracts with Plaintiffs for lifetime medical benefits; (3) whether Defendant should be collaterally estopped from arguing that equitable estoppel does not apply to this case; (4) whether Defendant should be equitably estopped from enforcing the provisions of the 1993 and 1994 plans against Plaintiffs; and (5) whether Defendant failed to provide certain written information to Plaintiff Jack Jarrard.

### 1. *Breach of Fiduciary Duties*

Under ERISA, a "person is a fiduciary with respect to a plan," and therefore subject to ERISA fiduciary duties, "to the extent" that he or she "exercised any discretionary authority or discretionary responsibility in the administration of the plan." 29 U.S.C. § 1002(21) (A). As the Court noted in an earlier opinion, the parties apparently agree that Defendant acted in a fiduciary capacity when Defendant explained the benefits available under its health care plan to Plaintiffs. The parties continue to dispute, however, whether Defendant breached its fiduciary duties.

In *Varity Corporation v. Howe*, 516 U.S. 489 (1996), the employer created a new subsidiary to enable the parent to shed some of its debt, knowing that the subsidiary might well fail. The employer induced employees to transfer to the new

subsidiary with deliberately misleading assurances that the new subsidiary would be financially successful and that the employee benefits plan would be financially sound and would not change. The United States Supreme Court found that the employer's misrepresentations to the employees regarding the status of the plan amounted to a breach of fiduciary duty.

The Sixth Circuit in *Sprague v. General Motors Corporation*, 133 F.3d 388 (6th Cir. 1998) (en banc), recently addressed the application of the Supreme Court's holding in *Varity Corporation* to facts similar to those of the present case. The *Sprague* court noted that the defendant, General Motors ("GM"), had for more than two decades engaged in systematic reductions in the size of its salaried workforce. To assist in these reductions, GM launched a special early retirement program designed to induce salaried workers to retire before reaching normal retirement age. In the course of explaining these early retirement programs, GM made numerous oral and written representations regarding the health care benefits available to early retirees. Most early retirees participated in exit interviews during which a particular early retirement program was described. These interviews were conducted by plant supervisors, members of the benefits staff, and others. Many of the early retirees also received documents summarizing applicable retirement benefits which often informed retirees that their health insurance would be paid by GM for life. Such documents, however, sometimes put the retirees on notice of GM's right to change benefits, advising, for example, that "General Motors Corp. reserves the right to amend, change or terminate the Programs described." *Id.* at 395. A small number of early retirees expressly asked GM representatives about the possibility of future changes to health care benefits. The answers given, according to the Sixth Circuit, were accurate and acknowledged that benefits could be changed in the future. In late 1987, GM announced that early the following year significant changes would become effective in health care coverage for

both salaried employees and retirees. A class action lawsuit was filed shortly thereafter challenging the legality of these changes.

The Sixth Circuit found that GM's description of the benefits provided under its early retirement program did not breach any applicable fiduciary duty. Distinguishing the facts found in *Sprague* from those in *Varity Corporation*, the Sixth Circuit explained:

> *Varity Corp.* teaches that GM may have acted in a fiduciary capacity when it explained its retirement program to the early retirees. As a matter of law, however, we do not believe that GM committed a breach of any applicable fiduciary duty. In the first place, GM never told the early retirees that their health care benefits would be fully paid up or vested upon retirement. What GM told many of them, rather, was that their coverage was to be paid by GM for their lifetimes. This was undeniably true under the terms of GM's then-existing plan.
>
> Explanations of benefits tend to sound promissory by their very nature. While these explanations may state a company's current intentions with respect to the plan, they cannot be expected to foreclose the possibility that changing financial conditions will require a company to modify welfare benefit plan provisions at some point in the future. GM's failure, if it may properly be called such, amounted to this: the company did not tell the early retirees at every possible opportunity that which it had told them many times before—namely, that the terms of the plan were subject to change. There is, in our view, a world of difference between the employer's

> deliberate misleading of employees in *Varity Corp.* and GM's failure to begin every communication to plan participants with a caveat.

*Sprague*, 113 F.3d at 405 (footnote, internal quotation marks, and citation omitted).

In determining that GM had not breached its fiduciary duty, the Sixth Circuit stated that "[h]ad an early retiree asked about the possibility of the plan changing, and had he received a misleading answer, or had GM on its own initiative provided misleading information about the future of the plan . . . , a different case would have been presented." *Id.* at 406. Indeed, in a subsequent case, the court reiterated that a fiduciary must give complete and accurate information in response to beneficiaries' questions. *See Krohn*, 173 F.3d at 547. The court stated, "[a] fiduciary breaches its duties by materially misleading plan participants, regardless of whether the fiduciary's statements or omissions were made negligently or intentionally." *Id.* (citation omitted).

In the present case, like *Sprague*, Defendant's statements to Plaintiffs that they would retain their medical benefits "for life" were true under the terms of the then-existing plan. Plaintiffs offered no evidence that Ms. Pike, Charles Wright, or any other Armstrong or Pirelli official deliberately misled them regarding their retiree medical benefits. In fact, Plaintiffs acknowledged at trial that the statements that they would receive medical statements for life were consistent with what the successive employers' practices had been for many years prior to their retirement. Plaintiffs also acknowledged at trial that they had no information suggesting that, at the time each retired, Armstrong or Pirelli was planning to modify or terminate their retiree medical benefits in 1993. As the *Sprague* decision provides, Defendant was not required to repeatedly tell Plaintiffs that the plan was subject to change. Absent evidence of an improper motive for offering the early retirement option, an intent to later change the plan at the

time the OPS program was implemented, or any misleading statements by Defendant, Plaintiffs' breach of fiduciary duty claims fail.

However, the Court believes, with respect to Plaintiffs Fitzsimmons and Jarrard, that the present action can be distinguished from *Sprague*. In *Sprague*, an employer merely failed to disclose that it had reserved the right to amend its ERISA plan; however, in the present action, Defendant provided inaccurate and misleading responses to direct questions by Mr. Fitzsimmons and Mr. Jarrard regarding the future of the plan. When questioned, Ms. Pike instructed Mr. Fitzsimmons and Mr. Jarrard not to worry about the company's reservation of right to change benefits in their employee handbooks. Rather than explaining that the language gave Defendant the right to modify or terminate Plaintiffs' medical benefits, both Ms. Pike and Mr. Weymouth inaccurately told the two plaintiffs that the language allowed the company to change insurance carriers. Although there is no evidence that either Ms. Pike or Mr. Weymouth did so deliberately, under the Sixth Circuit's opinion in *Krohn*, their negligently-rendered misleading responses sustain Mr. Fitzsimmons' and Mr. Jarrard's breach of fiduciary duty claims. Accordingly, the Court finds in favor of Plaintiffs Fitzsimmons and Jarrard as to their breach of fiduciary duty claims.

2. *Breach of Contract*

In its Memorandum addressing Defendant's Motion for Summary Judgment, the Court, again relying on *Sprague*, held that Plaintiffs could assert at trial a cause of action for breach of contract based on non-plan documents *provided* Plaintiffs were able to make a particularized showing of conduct tantamount to fraud. *See Sprague*, 133 F.3d at 403 ("Altering a welfare plan on the basis of non-plan documents and communications, *absent a particularized showing of conduct tantamount to fraud*, would undermine ERISA.")

(emphasis added) (quoting *Moore*, 856 F.2d at 489)). To establish fraud, each plaintiff must show a false representation of a material fact made knowingly or recklessly upon which the plaintiff has reasonably relied to his detriment. *See Ockerman v. May Zima & Co.*, 27 F.3d 1151, 1156 n.5 (6th Cir. 1994).

As the Court concluded with respect to Plaintiffs' breach of fiduciary duty claim, to the extent that Ms. Pike described retiree benefits as being for life, she was accurately describing the terms of the then-existing retiree medical benefits plan. Ms. Pike's testimony at trial indicates that her statements with respect to the duration of benefits were not made with knowledge of their falsity or with recklessness:

Q. All right. And I understand you believe that to be the policy and an accurate statement of the policy that you provided to these individuals, right?
A. That's true.
Q. Excuse me?
A. Yes, sir.
Q. Okay. And did anyone Armstrong or Pirelli advise you that that was not the policy or the practice, at that time?
A. No, sir.
Q. You have later come to find out that that was inaccurate, haven't you?
A. Yes, sir.
Q. Yes?
A. Yes, sir.
Q. And I can tell by your response I know that's upsetting to you, isn't it, that what you told these people was inaccurate?
A. It wasn't inaccurate at that particular time to me. I told—
Q. To you?

A. Yeah, I told them at that time what I believed the plan was.

Trial Tr. pp. 388-389.

No other evidence was presented at trial indicating that Ms. Pike's representations were false, let alone made with the intent to deceive Plaintiffs. Likewise, no evidence was submitted indicating that Defendant intended in 1986, 1987, or 1990 to modify or terminate medical benefits for existing retirees in 1993.

To the extent that Ms. Pike provided inaccurate and misleading responses to Mr. Fitzsimmons and Mr. Jarrard's questions regarding Defendant's right to modify or terminate Plaintiffs' medical benefits, Ms. Pike's testimony at trial again indicates that her statements were not made with knowledge of their falsity or with recklessness:

Q. . . . And in fact, don't you remember people asking you with the language in the Summary Plan Description where it says "This plan can be altered or amended," that general language, you told people that that was for the benefit of the company so you could change insurance carriers, didn't you?

A. If I had that discussion, I am sure I would have talked about insurance carrier.

Q. Right. Now, whatever information you provided to [plaintiffs], did you believe it to be true at that time?

A. Yes, sir.

Q. You certainly wouldn't have provided any information that you thought was intentionally misleading, would you?

A. No, sir.

Trial Tr. pp. 396-97.

No other evidence was presented at trial indicating that Ms. Pike's representations made intentionally or recklessly. As a result, Plaintiffs' proof falls far short of making "a particularized showing of conduct tantamount to fraud" on the part of Defendant. Accordingly, the Court finds in favor of Defendant as to Plaintiffs' breach of contract claim.

3. *Collateral Estoppel*

Plaintiffs assert that Defendant should be collaterally estopped from relitigating the issue of equitable estoppel based on Judge Nixon's opinion in *United Rubber*, 873 F. Supp. 1093. In *United Rubber*, the plaintiffs, hourly employees for Pirelli (the same defendant as in this case), challenged the legality of Pirelli's decision to terminate retiree health benefits. In holding that the employees were entitled to continuation of their benefits, the court found that Pirelli did not have the right to terminate the retirees' benefits because it:

> has consistently told the retirees that their benefits were for life. Second, by unilaterally terminating the benefits of the retirees, the Court finds that [Pirelli] has shown that it has always believed that such benefits were not for life. Third, the Court finds that [Pirelli] has acknowledged that it used the benefits as an inducement to employment and as a substitute for present wages. Fourth, the Court finds that the retirees had no knowledge that [Pirelli] could terminate their benefits until they received [Pirelli's] letter of July 8, 1994. Finally, the Court finds that Plaintiff retirees relied upon the representations by working for [Pirelli], by foregoing present wages for future benefits, and by retiring and not making any other arrangements for health benefits. As the Court finds that all the factors have been met, the Court concludes that [Pirelli] is estopped from terminating Plaintiff retirees' benefits.

873 F. Supp. at 1102.

In order to apply collateral estoppel, four requirements must be met:

(1) the *precise issue* raised in the present case must have been raised and actually litigated in the prior proceeding;

(2) determination of the issue must have been necessary to the outcome of the prior proceeding;

(3) the prior proceeding must have resulted in a final judgment on the merits; and

(4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.

*NAACP v. Detroit Police Officers Ass'n*, 821 F.2d 328, 330 (6th Cir. 1987) (footnote omitted) (emphasis added).

Plaintiffs and Defendant dispute whether the issue in *United Rubber* is identical to the issue before this Court. While the present dispute involves benefits available to salaried employees, in *United Rubber* the court considered whether Pirelli was required to continue benefits provided to hourly employees. As Judge Nixon's findings of fact in *United Rubber* reveal, hourly employees' retiree insurance benefits arose under collectively bargained Employee Benefits Agreements which constituted the welfare benefit plans for those hourly employees. The United Rubber, Cork, Linoleum and Plastic Workers of America ("URW"), an unincorporated labor organization, and its affiliated local unions served as the collective bargaining representatives of Pirelli's hourly employees, negotiating with Pirelli with regard to health care benefits provided by Pirelli for the hourly employees.

The issue in the present issue involves health benefits for individual *salaried* retirees who were subject to several medical benefit plans and who retired at different times.

Their benefits are not provided under the collectively bargained Employee Benefit Agreements entered into between Pirelli and the Union, but instead under separate benefit plans maintained by Pirelli from time to time for its salaried employees. Federal courts have fashioned a uniform body of federal law to govern the enforcement of collective bargaining agreements. The context in which Pirelli made representations to its hourly employees, whose benefits are governed by the collectively bargained agreements, is different than that in which Pirelli made representations to its salaried employees. While Pirelli may have made similar representations to both hourly and salaried employees regarding the duration of their benefits, the various plans are different and the consequences could be dissimilar due to the different law governing collective bargaining agreements under these circumstances. Thus, the Court finds that the first element necessary to sustain Plaintiffs' collateral estoppel claim, namely that the *precise issue* in the two cases be the same, was not established. Accordingly, the Court finds in favor of Defendant as to Plaintiffs' collateral estoppel claim.

4. *Equitable Estoppel*

As Plaintiffs contend, the Court's summary judgment decision dismissing Plaintiffs' equitable estoppel claim is not a final order and, thus, the Court may reconsider the claim at any time prior to entry of a final judgment. *See* Fed. R. Civ. P. 54; *Bennett v. Youker*, No. 86-1075, 1986 WL 16938, *1 (6th Cir. 1986) (holding that the district court's order summarily dismissing claims against defendants was not a final judgment).

The elements of an equitable estoppel claim are as follows:

> (1) there must be conduct or language amounting to a representation of material fact; (2) the party to be estopped must be aware of the true facts; (3) the party to be estopped must intend that the representation be acted

> on, or the party asserting the estoppel must reasonably believe that the party to be estopped so intends; (4) the party asserting the estoppel must be unaware of the true facts; and (5) the party asserting the estoppel must reasonably or justifiably rely on the representation to his detriment.

*Sprague*, 133 F.3d at 406 (citing *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1298 (6th Cir. 1991)). Although equitable estoppel may be a viable claim in ERISA cases, the Sixth Circuit in *Sprague* limited application of the doctrine to those situations in which the terms of the plan documents are ambiguous. 133 F.3d at 404 ("Principles of estoppel . . . cannot be applied to vary the terms of unambiguous plan documents; estoppel can only be invoked in the context of ambiguous plan provisions.")

In an earlier Memorandum the Court found that Defendant expressly reserved the right in the plan documents themselves to modify the terms of the benefit plan under which the parties seek relief. (Docket Entry No. 93, at 7 n.7). Plaintiffs have conceded that the plan documents under which their claims to benefits arise contain unambiguous reservations by PATC of the right to modify or terminate the plans.[2] The Court reiterates that because "[p]rinciples of estoppel . . . cannot be applied to vary the terms of unambiguous plan documents," *id.* at 404, Plaintiffs' equitable estoppel claim must fail as a matter of law. *Sprague* mandates this outcome despite the fact that Defendant may have made oral and written statements contrary to the plan documents. *See id.* ("In the fact of GM's clearly stated right to amend—a right contained in the plan to which the plaintiffs had access and in many of the summaries they were given—reliance on statements allegedly suggesting the contrary was not, and

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[2] Plaintiffs' 8(b) Response No.1.

could not be, reasonable or justifiable . . . ."). Accordingly, the Court must find in favor of Defendant with regard to Plaintiffs' equitable estoppel claim.

5. *Failure to Provide Documents to Jack Jarrard*

Section 1024(b) (4) of ERISA provides that:

> The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.

Section 1132 (c) of ERISA provides that an administrator who fails to comply with a request may be liable to a plan participant for up to $100.00 per day.

In a letter dated March 10, 1993, to Mr. Weymouth, Plaintiff Jarrard requested: (1) a copy of The Armstrong Tire Company's Severance Compensation Plan for Salaried Employees; (2) a copy of "each policy book that was issued by Armstrong since 1973"; (3) that retirees have access to read those documents at the Nashville Plant Labor Relations Office, and to obtain copies if necessary; and (4) a list of all Nashville salaried retirees, addresses, phone numbers, and dates of retirement. (Docket Entry No. 47, Ex. 8). Mr. Weymouth, then Vice President of Human Resources, responded by letter dated April 2, 1993, supplying Plaintiff Jarrard with a copy of the Severance Compensation Plan for Salaried Employees and the latest summary plan description. (Docket Entry No. 47, Ex. 9). Mr. Weymouth explained in his letter that Pirelli was under no obligation to provide Mr. Jarrard with the other documents he requested and that Pirelli considered Mr. Jarrard's requested list for names and

information about salaried employees to be confidential. (*Id.*) At trial, Plaintiff Jarrard offered no further proof in support of his claim against Defendant for failure to provide information.

The only information to which Mr. Jarrard or any other participant or beneficiary is entitled is the information specified in 29 U.S.C. § 1024(b) (4). The uncontradicted evidence shows that Defendant provided Mr. Jarrard with a copy of the Severance Compensation Plan for Salaried Employees which he requested. Defendant is required only to provide upon request those documents enumerated in § 1024 (b) (4). The other documents requested by Mr. Jarrard in his March 10, 1993, letter were not encompassed within the scope of those documents Defendant was required to supply under § 1024(b) (4).

In addition, there is no general requirement in § 1024(b) (4) that the plan administrator make available to all retirees access to and copies of whatever documents they may wish to review. Indeed, 29 U.S.C. § 1132(b) (2) only applies to an administrator who fails to comply with a request for *such information as the administrator is statutorily required to furnish.* Thus, the Court finds that Defendant supplied Mr. Jarrard, in a timely fashion, those documents which he requested which came within the provisions of 29 U.S.C. § 1024(b) (4). Accordingly, the Court finds in favor of Defendant with regard to Plaintiff Jarrard's failure to provide documents claim.

## CONCLUSION

For the reasons more fully outlined in the Memorandum, the Court finds in favor of Defendant with respect to the following claims: (1) Count II, Plaintiffs' breach of fiduciary duties claim as to all Plaintiffs except Ron Fitzsimmons and Jack Jarrard; (2) Count IV, Plaintiffs' equitable estoppel claim as to all Plaintiffs; (3) Count V, Plaintiff Jack Jarrard's

failure to provide information claim; (4) Count VI, Plaintiffs' breach of contracts claim as to all Plaintiffs; and (5) Plaintiffs's collateral estoppel claim.

The Court, however, finds Defendant liable to Plaintiffs Fitzsimmons and Jarrard with respect to their breach of fiduciary duties claim. As such, the damages phase of the trial will proceed as to Plaintiffs Fitzsimmons and Jarrard.

A final judgment shall be entered in this case, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, upon completion of the damages phase of the trial, which shall be scheduled forthwith.

/s/ _____
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

**APPENDIX C**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[Filed Dec. 11, 2002]

No. 00-6475

CLAY K. JAMES, *et al.*,
*Plaintiffs-Appellants*,

v.

PIRELLI ARMSTRONG TIRE CORPORATION,
*Defendant-Appellee.*

ORDER

BEFORE: BATCHELDER and CLAY, *Circuit Judges*; and ALDRICH,* *District Judge.*

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

*Hon. Ann Aldrich, Senior United States District Judge for the Northern District of Ohio, sitting by designation.